

**COMBINED DECLARATION/POWER OF ATTORNEY  
FOR PATENT APPLICATION**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe that I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled **SURGICAL TOOL FOR USE IN EXPANDING A CANNULA**, the specification of which (check one):

\_\_\_\_\_ is attached hereto

  X   was filed on SEPTEMBER 19, 2003 as U.S. Application Serial No. 10/665,754

\_\_\_\_\_ and was amended \_\_\_\_\_ on (if applicable)

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability of this application in accordance with Title 37, Code of Federal Regulations, §1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application..

I hereby claim foreign priority benefit(s) under Title 35, United States Code §119 (a)-(d) or (f), or 365(b) of any foreign application for patent, inventor's or plant breeder's rights certificate(s), or 365(a) of any PCT international application(s) which designates at least one country other than the United States of America, listed below and have also identified below any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s) or of any PCT international application having a filing date before that of the application of which priority is claimed:

Prior Foreign Application(s)

Number :  
Country :  
Day/Month/Year Filed :  
Priority (yes/no) :

**POWER OF ATTORNEY:** As a named inventor, I hereby appoint the Practitioners associated with **Customer No. 28075** as my/our attorney to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

**Please direct all correspondence to the address associated with Customer No. 28075.**

The undersigned hereby authorizes the U.S. attorney or agent named herein to accept and follow instructions from ENDIUS, Incorporated, as to any action to be taken in the United States and Trademark Office regarding this application without direct communication between the U.S. attorney or agent and the undersigned. In the event of a change in the persons from whom instructions may be taken, the U.S. attorney or agent named herein will be so notified by the undersigned.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon, I further declare that I understand the content of this declaration.

Full name of sole or first inventor: JAMES J. PAGLIUCA

Residence: MILLIS, MASSACHUSETTS

Citizenship: US

Post Office Address: 184 Village Street, Millis, Massachusetts 02054

Inventor's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Full name of second or joint inventor: JOHN D. UNGER

Residence: WRENTHAM, MASSACHUSETTS

Citizenship: US

Post Office Address: 20 Farm Hill Road, Wrentham, Massachusetts 02093

Inventor's Signature: John D. Unger

Date: 20-Aug-2007

Full name of third or joint inventor: JAMES E. ROBBINS

Residence: NORTH ATTLEBORO, MASSACHUSETTS

Citizenship: US

Post Office Address: 132 West Main Street, Norton, Massachusetts 02766

Inventor's Signature: James E. Robbins

Date: 20-AUG-2007

Full name of fourth or joint inventor: THOMAS W. DAVISON

Residence: FRANKLIN, MASSACHUSETTS

Citizenship: US

Post Office Address: 20 Spruce Pond Road, Franklin, Massachusetts 02038

Inventor's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Full name of fourth or joint inventor: ADAM SHER

Residence: NORTH ATTLEBORO, MASSACHUSETTS

Citizenship: US

Post Office Address: 30 Juniper Road, #43, North Attleboro, Massachusetts 02760

Inventor's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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Citizenship: US

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Inventor's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Full name of third or joint inventor: JAMES E. ROBBINS

Residence: NORTH ATTLEBORO, MASSACHUSETTS

Citizenship: US

Post Office Address: 38 Raymond Tatro Lane, North Attleboro, Massachusetts 02760

Inventor's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Full name of fourth or joint inventor: THOMAS W. DAVISON

Residence: FRANKLIN, MASSACHUSETTS

Citizenship: US

Post Office Address: 20 Spruce Pond Road, Franklin, Massachusetts 02038

Inventor's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Full name of fifth or joint inventor: ADAM SHER

Residence: FRANKLIN, MASSACHUSETTS

Citizenship: US

Post Office Address: 383 Chestnut Street, Franklin, Massachusetts 02038

Inventor's Signature: Adam Shaw

Date: 8/1/07

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Residence: MILLIS, MASSACHUSETTS      Citizenship: US  
Post Office Address: 184 Village Street, Millis, Massachusetts 02054

Inventor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Full name of second or joint inventor: JOHN D. UNGER  
Residence: WRENTHAM, MASSACHUSETTS      Citizenship: US  
Post Office Address: 20 Farm Hill Road, Wrentham, Massachusetts 02093

Inventor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Full name of third or joint inventor: JAMES E. ROBBINS  
Residence: NORTH ATTLEBORO, MASSACHUSETTS      Citizenship: US  
Post Office Address: 38 Raymond Tatrow Lane, North Attleboro, Massachusetts 02760

Inventor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Full name of fourth or joint inventor: THOMAS W. DAVISON  
Residence: NAPLES, FLORIDA      Citizenship: US  
Post Office Address: 128 Bear's Paw Tr. Naples, FL 34105

Inventor's Signature:  \_\_\_\_\_ Date: 8-24-07

Full name of fourth or joint inventor: ADAM SHER  
Residence: NORTH ATTLEBORO, MASSACHUSETTS      Citizenship: US  
Post Office Address: 30 Juniper Road, #43, North Attleboro, Massachusetts 02760

Inventor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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Citizenship: US

Post Office Address: 184 Village Street, Millis, Massachusetts 02054

Inventor's Signature: \_\_\_\_\_



Date: \_\_\_\_\_

1/30/08

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Citizenship: US

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## § 1.56

### Duty to disclose information material to patentability.

- (a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
- (1) Prior art cited in search reports of a foreign patent office in a counterpart application, and
  - (2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claims patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
- (1) It establishes, by itself or in combination with other information, a *prima facie* case of unpatentability of a claim; or
  - (2) It refutes, or is inconsistent with, a position the applicant takes in:
    - (i) Opposing an argument of unpatentability relied on by the Office, or
    - (ii) Asserting an argument of patentability.

A *prima facie* case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
- (1) Each inventor named in the application;
  - (2) Each attorney or agent who prepares or prosecutes the application; and
  - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.
- (e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

[42 FR 5593, Jan. 28, 1997; paras. (d) & (e) — (j), 47 FR 21751, May 19, 1982, effective July 1, 1982; para. (c), 48 FR 2710, Jan. 20, 1983, effective Feb. 27, 1983; paras. (b) and (j), 49 FR 554, Jan. 4, 1984, effective Apr. 1, 1984; paras. (d) and (h), 50 FR 5171, Feb. 6, 1985, effective Mar. 8, 1985; para. (e), 53 FR 47808, Nov. 28, 1988, effective Jan. 1, 1989; 57 FR 2021, Jan. 17, 1992, effective Mar. 16, 1992; para. (e) added, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000]